



MAYOR AND COUNCIL AGENDA

NO.

3

DEPT.: Legal /CPDS

STAFF CONTACT: Paul T. Glasgow, City Attorney

DATE PREPARED: 2/24/05

FOR MEETING OF: 3/14/05

SUBJECT: Town Center - First Amendment to the General Development Agreement for the Block 4 Public Parcel of the Rockville Town Square by and among the Mayor and Council of Rockville, RD Rockville Block 4, LLC, and Federal Realty Investment Trust in furtherance of the redevelopment of the Rockville Town Center

RECOMMENDATION: Adopt resolution to approve and authorize execution of a First Amendment to the General Development Agreement for Block 4 Public Parcel of the Rockville Town Square by and among the Mayor and Council of Rockville, RD Rockville Block 4, LLC, and Federal Realty Investment Trust in furtherance of the redevelopment of the Rockville Town Center

DISCUSSION: The First Amendment to the General Development Agreement for the Block 4 Public Parcel of Rockville Town Square amends the General Development Agreement for Block 4 of the Rockville Town Square, incorporating modifications to the Rockville Town Square redevelopment project that have occurred since the execution of the Block 4 GDA on June 14, 2004. The Block 4 GDA, and this First Amendment thereto, are highly complex documents that set forth the obligations, rights, and remedies of the City, Federal Realty and the residential co-developer for the redevelopment of the Rockville Town Center.

Principal modifications contained in the First Amendment to the Block 4 GDA include changing the residential development to all condominium units; providing for the purchase by the residential co-developer of additional parking spaces in lieu of leasing spaces; deleting the provisions requiring the rental of parking spaces by the residential co-developer; approval of the construction lender for the private improvements; elimination of insurance provisions requiring the procurement of an owners controlled insurance policy; and elimination of certain conditions precedent to the Phase II closing. The Phase II closing is anticipated to occur mid-March.

Options Considered: N/A

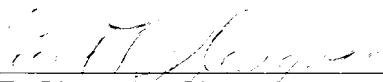
Fiscal Impact: The redevelopment of Town Center has significant cost implications for both the private improvements and the public improvements.

Change in Law or Policy: N/A

Boards and Commissions Review: N/A

Next Steps: Continue implementation of the General Development Agreement for the Rockville Town Center.

PREPARED BY:



Paul T. Glasgow, City Attorney



Date

LIST OF ATTACHMENTS:

1. Resolution
2. First Amendment to General Development Agreement for Block 4 Public Parcel of Rockville Town Square

Resolution No. _____ RESOLUTION: To approve and authorize execution of the First Amendment to the General Development Agreement for the Block 4 Public Parcel of Rockville Town Square by and among the Mayor and Council of Rockville, RD Rockville Block 4, LLC, and Federal Realty Investment Trust for the redevelopment of the properties known as Block 4 in the Rockville Town Square in furtherance of the redevelopment of the Rockville Town Center

WHEREAS, on October 22, 2001, the Mayor and Council of Rockville adopted Ordinance No. 29-01, which adopted the Town Center Master Plan as an amendment to the Master Plan for the City of Rockville; and

WHEREAS, the Town Center Master Plan was developed and endorsed by the Town Center Master Plan Advisory Group in consultation with Urban Design and Planning Consultants; and

WHEREAS, the goal of the Plan is to create a daytime, evening, and weekend activity center that incorporates a mix of uses, incorporates principles of “Smart Growth,” and recognizes the potential of ready access to the Rockville Metro Station; and

WHEREAS, on December 16, 2002, by Resolution No. 24-02, the Mayor and Council (the “City”) authorized the execution of a non-binding Letter of Intent by and among the City, Montgomery County, Maryland (the “County”), and Federal Realty Investment Trust (“Federal Realty”), to express their commitment to the redevelopment of the Rockville Town Center, describe the essential features of the redevelopment plan for that area of the Rockville Town Center bounded by North Washington Street, Beall

Avenue, Hungerford Drive, and Middle Lane, and confirm the location of the new Rockville regional library on Beall Avenue; and

WHEREAS, on or about December 23, 2002, the non-binding Letter of Intent was executed by and among the City, the County, and Federal Realty; and

WHEREAS, on February 9, 2004, the Mayor and Council authorized the execution of a non-binding Term Sheet (the “Term Sheet”) by and among the City and RD Rockville Block 4, LLC; and

WHEREAS, the non-binding Term Sheet was subsequently executed by and among the City and RD Rockville Block 4, LLC; and

WHEREAS, on June 1, 2004, by Resolution No. 17-04, the Mayor and Council authorized the execution of the General Development Agreement for the Block 4 Public Parcel of Rockville Town Square (the “Block 4 GDA”) in furtherance of the redevelopment of the Rockville Town Center, the Town Center Master Plan, the Letter of Intent by and among the City, Montgomery County, and Federal Realty, the Term Sheet by and between the City and RD Rockville Block 4, LLC, and the Original and Amended and Restated General Development Agreement for the development of the Town Square Blocks 1, 2, 3B and 5; and

WHEREAS, on June 14, 2004, the Block 4 GDA was executed by and among the City, RD Rockville Block 4, LLC and Federal Realty; and

WHEREAS, the City, RD Rockville Block 4, LLC and Federal Realty desire to amend the Block 4 GDA to provide for modifications to the redevelopment of the Rockville Town Center since the execution of the Block 4 GDA.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF ROCKVILLE, that the Mayor or the City Manager is hereby authorized to execute the First Amendment to the General Development Agreement for the Block 4 Public Parcel of Rockville Town Square (the "First Amendment") on behalf of the Mayor and Council of Rockville, with Federal Realty Investment Trust, and RD Rockville Block 4, LLC (including any entities controlled affiliated with RD Rockville Block 4, LLC in connection with the redevelopment of Block 4 in the Rockville Town Square), in a form which is substantially the same as the form of the attached First Amendment, subject to the approval of the City Attorney, and the City Manager and City Attorney are authorized and directed to implement and carry out the terms and conditions in the General Development Agreement for Block 4 Public Parcel of Rockville Town Square and the First Amendment thereto, including, but not limited to, the execution and delivery of all documents required to implement the General Development Agreement for Block 4 Public Parcel of Rockville Town Square and the First Amendment thereto.

* * * * *

I hereby certify that the foregoing is a true a correct copy of
a resolution adopted by the Mayor and Council at its
meeting of

Claire F. Funkhouser, CMC, City Clerk

**FIRST AMENDMENT TO AMENDED AND RESTATED
GENERAL DEVELOPMENT AGREEMENT FOR THE
REDEVELOPMENT OF THE ROCKVILLE TOWN
SQUARE (Blocks 1/2, 3B and 5)**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED GENERAL DEVELOPMENT AGREEMENT FOR THE REDEVELOPMENT OF THE ROCKVILLE TOWN SQUARE (Blocks 1/2, 3B and 5) ("this First Amendment") is made effective as of March __, 2005, by and among THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, a municipal corporation of the State of Maryland (the "City"), FEDERAL REALTY INVESTMENT TRUST, a Maryland Real Estate Investment Trust ("FRIT"), and RTS RESIDENTIAL BLOCK 1/2, LLC, a Delaware limited liability company, RTS RESIDENTIAL BLOCK 3B, LLC, a Delaware limited liability company, and RTS RESIDENTIAL BLOCK 5, LLC, a Delaware limited liability company (collectively, the "Residential Co-Developer").

EXPLANATORY STATEMENT:

A. The City, FRIT and RD Rockville, LLC, a Maryland limited liability company ("RD Rockville"), previously entered into that certain Amended and Restated General Development Agreement for the Redevelopment of the Rockville Town Center (Blocks 1/2, 3B and 5) by and among the parties hereto and dated as of June 14, 2004 ("GDA").

B. With the consent of the City and FRIT, effective as of the date of the "Phase I Closing" under and as defined in the GDA (i) RD Rockville assigned, and RTS-RD Rockville, LLC, a Delaware limited liability company ("RTS-RD"), assumed all of RD Rockville's rights and obligations under the GDA pursuant to a certain assignment and assumption instrument such parties executed and delivered at the Phase I Closing; and (ii) RTS-RD assigned, and each entity comprising the Residential Co-Developer assumed, all rights and obligations of RTS-RD under the GDA with respect to such entity's respective "Development Block" within the "Project" (as such terms are defined in the GDA) pursuant to certain assignment and assumption instruments such parties executed and delivered at the Phase I Closing. As a result, RTS Residential Block 1/2, LLC is the "Residential Co-Developer" for Block 1/2, RTS Residential Block 3B, LLC is the "Residential Co-Developer" for Block 3B, and RTS Residential Block 5, LLC is the "Residential Co-Developer" for Block 5.

C. The parties hereto desire to modify certain terms and conditions of the GDA, all as more fully set forth in this First Amendment.

NOW, THEREFORE, in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Explanatory Statement: Defined Terms The Explanatory Statement of this First Amendment forms an integral part hereof. The use of initially capitalized terms in this First

Amendment shall have the meaning ascribed to them in the GDA unless the context requires otherwise.

2. Amendment to List of Exhibits. That portion of the List of Exhibits attached to the GDA listing the “Specialized Documents” is hereby deleted in its entirety and is replaced with the following new list of “Specialized Documents”:

Specialized Documents

R	Form of Special Warranty Deed
R-1	Reconveyance Deed Escrow Agreement
S	Ordinance Authorizing City Appropriation for Public Improvements
T	Form of Purchase Money Deed of Trust
U	Form of Purchase Money Promissory Note
V	Form of Memorandum of General Development Agreement
W	Form of Owner’s Affidavit
X-1	Schedule B-1 Requirements to be Satisfied by the City as of Phase I Closing Date
X-2	Schedule B-1 Requirements for Block 4 Stub Parcel to be Satisfied as of Phase II Closing Date
X-3	Schedule B-1 Requirements to be Satisfied as of Phase II Closing Date
Y-1	Pro Forma Title Insurance Policy for Residential Co-Developer as of Phase I Closing Date
Y-2	Pro Forma Title Insurance Policy for Block 4 Stub Parcel for Residential Co-Developer as of Phase I Closing Date
Y-3	Pro Forma Title Insurance Policy for Phase II Closing Date
Y-4	Tri-Party Agreement
Y-5	Lehman Recognition Agreement
Y-6	Conditional Assignment of Contracts

3. Amendment to Section 1 (Definition of “Block 1/2 Parking Purchase Agreement”). Section 1 of the GDA is amended by adding the following new definition in the appropriate alphabetical order set forth in that Section:

Block 1/2 Parking Purchase Agreement shall have the meaning described in Section 8.4.5 (Block 5 Purchased Parking Spaces and Block 1/2 Purchased Parking Spaces).

4. Amendment to Section 1 (Definition of “Block 1/2 Purchased Parking Spaces”). Section 1 of the GDA is amended by adding the following new definition in the appropriate alphabetical order set forth in that Section:

Block 1/2 Purchased Parking Spaces shall have the meaning described in Section 8.4.5 (Block 5 Purchased Parking Spaces and Block 1/2 Purchased Parking Spaces).

5. Amendment to Section 1 (Definition of “Conditionally Assigned Items”). Section 1 of the GDA is amended by adding the following new definition in the appropriate alphabetical order set forth in that Section:

Conditionally Assigned Items shall have the meaning described in Section 8.5.1.4.

6. Amendment to Section 1 (Definition of “Lender”). Section 1 of the GDA is amended by deleting the third sentence in the definition of “Lender” and replacing it with the following new sentence:

The City hereby approves the following as a Lender: Manufacturers and Traders Trust Company, Hypo Europe Bank, Bank of America, N.A., Wachovia Corporation, FleetBoston Financial Corporation, KeyBank, Wells Fargo, Corus Bank, N.A., and Fremont Investment & Loan.

7. Amendment to Section 1 (Definition of “Parking Lease”). Section 1 of the GDA is amended by deleting the definition of “Parking Lease.”

8. Amendment to Section 3.2.1.12. Section 3.2.1.12 of the GDA is hereby amended by deleting the Section in its entirety and replacing it with the following new Section 3.2.1.12:

3.2.1.12 Execute and deliver, within sixty (60) days after the Phase II Closing, the FRIT Cultural Arts Building Retail Purchase Agreement.

9. Amendment to Section 3.2.2.4. Section 3.2.2.4 of the GDA is hereby amended by deleting the Section in its entirety and replacing it with the following new Section 3.2.2.4:

3.2.2.4 Use commercially reasonable efforts to market, lease, own and operate the residential portion of the Private Improvements.

10. Amendment to Section 3.2.2.6. Section 3.2.2.6 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 3.2.2.6:

3.2.2.6 Execute and deliver the Block 5 Parking Purchase Agreement and the Block 1/2 Parking Purchase Agreement to which the City is the other party.

11. Amendment to Section 3.2.3.12. Section 3.2.3.12 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 3.2.3.12:

3.2.3.12 Execute and deliver the Block 5 Parking Purchase Agreement and the Block 1/2 Parking Purchase Agreement, to which the Residential Co-Developer is the other party.

12. Amendment to Section 3.2.3.14. Section 3.2.3.14 of the GDA is hereby amended by deleting the Section in its entirety and replacing it with the following new Section 3.2.3.14:

3.2.3.14 Execute and deliver, within sixty (60) days after the Phase II Closing, the FRIT Cultural Arts Building Retail Purchase Agreement.

13. Amendment to Section 5.1.1.1 (Development Approvals for Private Improvements). Section 5.1.1.1 of the GDA is hereby amended by deleting the words "rental apartment units" from the ninth and twelfth lines thereof and the word "condominium" from the tenth line thereof. As a result of these changes, the second sentence of Section 5.1.1.1 shall read as follows:

Notwithstanding anything to the contrary set forth herein, pursuant to the Development Approvals, (a) no more than fifteen percent (15%) of all residential units comprising the Private Improvements will be required to be MPDUs, (b) no more than fifteen percent (15%) of all residential condominium units comprising the Project Condominium Regime will be required to be MPDUs, (c) no fewer than five hundred twenty-five (525) for-sale residential units comprising the Residential Co-Developer Condominium Units will be permitted, (d) no less than 550,000 square feet of development comprising the Residential Co-Developer Condominium Units will be permitted, and (e) no less than 144,000 square feet of GLA of retail space comprising the Retail Condominium Units will be permitted.

14. Amendment to Section 5.2.1.1 (Development Approvals for Private Improvements). Section 5.2.1.1 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 5.2.1.1:

5.2.1.1 Development Approvals for Private Improvements. The parties hereto acknowledge and agree that the current Development Approvals for the Project include the Block 4 Land. The foregoing notwithstanding, if or before the Milestone Date, the City has either (a) been unable to acquire title to all of the Block 4 Land in conformity with the terms of this Agreement; or (b) has acquired title to the Townhouse Parcel solely; or (c) has acquired title to the Amoco Parcel solely, then the Development Approvals currently existing for the Project shall require modification, including, without limitation the addition of such number of Block 5 Purchased Parking Spaces as may be required to achieve the ratio of 1.8 Block 5 Purchased Parking Spaces for each residential "for sale" condominium unit located in Block 5. In the event of the occurrence of clauses (a), (b), or (c) above then the satisfaction of the Condition Precedent set forth in this Section 5.2.1.1 shall require that all Development Approvals for the Private Improvements, as modified to reflect the exclusion of all or such portion of the Block 4 Land as the City has been unable to acquire as of the Milestone Date (with the exception of the building permit(s)) shall be finally issued without Material Burdensome Requirements as reasonably determined by the Residential Co-Developer. Notwithstanding anything to the contrary set forth herein, pursuant to the Development Approvals, (i) no more than fifteen percent (15%) of all residential condominium units comprising the Project Condominium Regime will be required to be MPDUs, (ii) no fewer than five hundred twenty-five (525) for-sale residential units comprising the Residential Co-Developer Condominium Units will be permitted, (iii) no less than 550,000 square feet of development comprising the Residential Co-Developer Condominium Units will be permitted,

and (iv) no less than 144,000 GLA of retail space comprising the Retail Condominium Units will be permitted. In no event shall any requirement, matter, or condition specified in this Agreement, including any Exhibits attached hereto, be deemed to be Material Burdensome Requirements. The Condition Precedent set forth in this Section 5.2.1.1 is intended to benefit the parties to this Agreement. In the event of the occurrence of clauses (a), (b) or (c) above then in such event, the Residential Co-Developer shall pay any redesign costs necessary to obtain the Development Approvals for the Private Improvements. The parties acknowledge and agree that to the extent that the Project includes all of the Block 4 Land then, this Condition Precedent has been satisfied except (A) for the modification to the Block 5 Subdivision Plat to include the Block 4 Stub Parcel, and (B) as otherwise set forth on **Exhibit MM** attached hereto and made a part hereof.

15. Amendment to Section 5.2.1.6 (Evidence of Construction Financing). Section 5.2.1.6 of the GDA is hereby amended by deleting that provision in its entirety and replacing it with the following new Section 5.2.1.6:

5.2.1.6 Evidence of Construction Financing. The Residential Co-Developer shall have delivered to the City and FRIT copies of one or more binding loan commitments for the Construction Financing (all as more fully described in Section 3.2.2.2) and the Lender(s) shall be ready, willing and able to consummate closing pursuant to the terms of such loan commitment(s). The Condition Precedent set forth in this Section 5.2.1.6 is intended to benefit the City and FRIT.

16. Amendment to Section 5.2.1.8 (Tri-Party Agreement). Section 5.2.1.8 of the GDA is hereby amended by deleting that provision in its entirety and replacing it with the following new Section 5.2.1.8:

5.2.1.8 Tri-Party Agreement. The City and the Residential Co-Developer shall have entered into with the respective Lender for Blocks 1/2, 3B, and 5 a tri-party agreement (the “**Tri-Party Agreement**”) in the form attached hereto as a part hereof as **Exhibit Y-4**. The Tri-Party Agreement shall provide, among other things, that the City shall have the right, among its other rights and remedies, to purchase the applicable Lender’s loan evidenced by the Constructing Financing at par (i.e., upon payment of all principal and interest, late fees, and other charges under the Construction Financing) on an event of default by the Residential Co-Developer under the documents evidencing and securing the Construction Financing relating to the commencement or Completion of construction of the Private Improvements or on an Event of Default by the Residential Co-Developer under this Agreement relating to the commencement or Completion of construction of the Private Improvements and such default continues beyond any applicable notice or cure period specified therein or herein (and the failure or refusal of the Lender within a reasonable time thereafter to cure such default and Complete the Private Improvements pursuant to the Project Development Schedule that is reasonably adjusted to take into account such rights in favor of the Lender, or take steps to foreclose or otherwise gain title and control of the Private Improvements within the time period specified therein). The Tri-Party Agreement shall be in recordable form, binding upon the parties thereto and their

respective successors and assigns and may be recorded by any party thereto at the recording party's sole cost and expense among the Land Records of the County. The Condition Precedent set forth in this Section 5.2.1.8 is intended to benefit the City.

17. Amendment to Section 5.2.1.2 (Development Approvals for Public Improvements). Section 5.2.1.2 of the GDA is hereby amended by deleting that provision in its entirety and replacing it with the following new Section 5.2.1.2:

5.2.1.2 Development Approvals for Public Improvements. All Development Approvals (with the exception of the building permit(s)) for the Public Infrastructure Improvements and Public Parking Facilities shall be finally issued without Material Burdensome Requirements (as reasonably determined by the City), and the time period for the filing of appeals shall have expired with no appeals having been filed and with any appeals that have been filed having been finally resolved in favor of the Development Approvals without the imposition of any Material Burdensome Requirements. The Condition Precedent set forth in this Section 5.2.1.2 is intended to benefit all parties to this Agreement. In the event of the occurrence of any of the events described in Section 5.2.1.1 (a), (b) or (c) above then in such event, the City shall pay any redesign costs necessary to obtain the Development Approvals for the Public Improvements. The parties acknowledge and agree that to the extent that the Project includes all of the Block 4 Land then, this Condition Precedent has been satisfied.

18. Amendment to Section 5.2.1.14 (Parking Lease and the Block 5 Parking Purchase Agreement). Section 5.2.1.14 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 5.2.1.14:

5.2.1.14 Block 5 Parking Purchase Agreement and Block 1/2 Parking Purchase Agreement. The City and the Residential Co-Developer shall have entered into the Block 5 Parking Purchase Agreement and the Block 1/2 Parking Purchase Agreement.

19. Amendment to Section 5.2.1 (Conditions Precedent to Phase II Closing). Section 5.2.1 of the GDA is hereby amended by adding the following new Section 5.2.1.27:

5.2.1.27 Lehman Recognition Agreement. The City, the Residential Co-Developer, and Lehman Brothers Holdings Inc. or its affiliate, subsidiary, or designated securitization entity ("**Lehman**") shall have entered certain recognition agreements in the form attached hereto and made a part hereof as **Exhibit Y-5** in connection with those certain [Mezzanine Loans] from Lehman to affiliates of the Residential Co-Developer.

20. Amendment to Section 5.2.3.1 (Time and Place of Phase II Closing). Section 5.2.3.1 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 5.2.3.1:

5.2.3.1 If the City is able to satisfy the Conditions Precedent to the Phase II Closing with respect to the Block 4 Stub Parcel, as of the Milestone Date, Closing on the sale of the Development Rights under this Agreement shall be held on March __, 2005 (the "**Phase II Closing Date**").

21. Amendment to Section 5.2.3.6 (Phase II Closing Documents). Section 5.2.3.6 of the GDA is hereby amended by deleting the reference to "Parking Lease."

22. Amendment to Section 5.3 (Condominium). Section 5.3 of the GDA is hereby amended by deleting the third sentence in its entirety and replacing it with the following sentence:

The Condominium Documents shall include, among other things, (a) appropriate reciprocal easements, (b) provisions for party wall maintenance agreement, retail use restrictions for the Retail Condominium Units, proportionate sharing of common construction, maintenance, reconstruction, repair, and such other costs as FRIT, the Residential Co-Developer, and the City may agree (based on the respective costs of construction of the respective portions of the Project), and (c) easements in favor of the public over and across portions of the private property of the Retail Condominium Units or the pertinent condominium association(s); *provided, however*, that contemporaneous with subjecting the Project to the Project Condominium Regime, the Residential Co-Developer shall grant certain non-exclusive easements in favor of the City relating to public access over and across certain portions of the property owned by the Residential Co-Developer.

23. Amendment to Section 8.4.2 (Parking Lease). Section 8.4.2 of the GDA is hereby amended by deleting that provision in its entirety and replacing it with the following new Section 8.4.2:

8.4.2 INTENTIONALLY DELETED.

24. Amendment to Section 8.4.4 (Changes in Scope of Parking Spaces). Section 8.4.4 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 8.4.4:

8.4.4 Changes in Scope of Parking Spaces. Subject to the terms and conditions of this Agreement, the City will cause to be built the number of parking spaces in the Public Parking Facilities that satisfy the parking ratios (as set forth in the parking analysis prepared by Walker Parking specified in Section 2.5) for the Project but in no event less than a ratio of 1.6 spaces per residential unit available for use by Block 5 residents and 1.25 spaces per residential unit available for use by the Block 1/2 residents, as the Project may be adjusted and revised. The Residential Co-Developer and FRIT acknowledge and agree that the City has no obligation to create parking spaces in the Public Parking Facilities in excess of such ratio as it relates to the Project (as the Project may be adjusted and revised). Notwithstanding any contrary provision contained in this Agreement, if the Block 4 Public Parking Facility is not constructed, the City shall nonetheless

construct not less than approximately eight hundred twenty-five (825) parking spaces comprised of those spaces located within the Public Parking Facilities located within Block 1/2 and Block 5 as well as those to be sold pursuant to the Block 1/2 Parking Purchase Agreement and the Block 5 Parking Purchase Agreement.

25. Amendment to Section 8.4.5 (Block 5 Purchased Parking Spaces). Section 8.4.5 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 8.4.5:

8.4.5 Block 5 Purchased Parking Spaces and Block 1/2 Purchased Parking Spaces. The Residential Co-Developer shall pay to the City an amount equal to Twenty-Two Thousand Five Hundred Sixty Dollars (\$22,560) per space for the purchase of (a) 154 parking spaces to be located in the Block 5 Garage (the "**Block 5 Purchased Parking Spaces**") pursuant to the terms of a parking space purchase agreement to be entered into between the Residential Co-Developer for Block 5 and the City at the Phase II Closing (the "**Block 5 Parking Purchase Agreement**"); and (b) 324 parking spaces to be located in the Block 1/2 Garage (the "**Block 1/2 Purchased Parking Spaces**") pursuant to the terms of a parking space purchase agreement to be entered into between the Residential Co-Developer for Block 1/2 and the City at the Phase II Closing (the "**Block 1/2 Parking Purchase Agreement**"). The actual number of spaces, and hence the final purchase price for the Block 5 Purchased Parking Spaces and the Block 1/2 Purchased Parking Spaces, shall be subject to the terms and conditions of the respective Block 5 Parking Purchase Agreement and the Block 1/2 Parking Purchase Agreement. Commencing with the Phase II Closing, such payment shall be advanced in accordance with the schedule attached to the respective Block 5 Parking Purchase Agreement and the Block 1/2 Parking Purchase Agreement, and shall be subject to retainages and the receipt of appropriate lien waivers, architect's certificates of completion and reasonable evidence of payment as may be provided in the Block 5 Parking Purchase Agreement and the Block 1/2 Parking Purchase Agreement. Subject to the negotiation of mutually acceptable specific cost allocations contained in the Condominium Documents, the Residential Co-Developer shall be responsible for all expenses related to the operation, maintenance, repair and replacement of the Block 5 Purchased Parking Spaces and the Block 1/2 Purchased Parking Spaces. The foregoing notwithstanding, if the Block 4 Public Parking Facility is not constructed on the Townhouse Parcel, then the Residential Co-Developer shall have the obligation to purchase from the City, such number of additional Block 5 Purchased Parking Spaces (the "**Additional Spaces**") as may be required to achieve the ratio of 1.6 spaces to be available for use by the Block 5 residents, such additional spaces shall be contiguous to and purchased upon the same terms and conditions as set forth above for the original Block 5 Purchased Parking Spaces. The terms and conditions of the purchase of the Block 5 Purchased Parking Spaces shall be set forth in the Block 5 Parking Purchase Agreement to be entered into at the Phase II Closing and shall be in accordance with the terms of this Section 8.4.5. If the Block 4 Public Parking Facility is subsequently constructed on the Townhouse Parcel then the Residential Co-Developer shall promptly convey title to the

Additional Spaces to the City in exchange for a like number of Block 4 Purchased Parking Spaces, as defined in and in accordance with the terms of the Block 4 GDA. Title to the Additional Spaces shall be in the condition contemplated in Section 6.1.2 of this Agreement and the City and FRIT shall share equally all transfer and recordation taxes incurred in connection with the foregoing exchange. The parties acknowledge that FRIT is an intended third party beneficiary of such exchange of the Additional Spaces for the Block 4 Purchased Parking Spaces and shall have the right to enforce the provisions of this Section 8.4.5.

26. Amendment to Section 8.5.1.4. Section 8.5.1.4 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 8.5.1.4:

8.5.1.4 An executed conditional assignment (the “**Conditional Assignment of Contracts**”) of the construction contract, consultants contracts, payment and performance bonds, Construction Documents, design and engineering documents and other construction documents and specifications (collectively, the “**Conditionally Assigned Items**”) necessary to commence and Complete construction of the Public Parking Facilities and the Private Improvements in the form attached hereto and made a part hereof as Exhibit Y-6, and will provide that, subject to the rights in and to the Conditionally Assigned Items of the Lenders providing financing to the Residential Co-Developer or its Affiliates, the assignee will have the right to make full beneficial use of the Construction Documents for the Project without additional charge.

27. Amendment to Section 12. Section 12 of the GDA is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 12:

12. INSURANCE REQUIREMENTS.

FRIT, the Residential Co-Developer, and the City shall procure and maintain insurance, and shall cause their Architects and Consultants and contractor(s) and, to the extent applicable, each of their subcontractors, to procure and maintain insurance, for the Project in conformity with the following provisions:

12.1 Architects and Consultants, General Contractors and Subcontractors.

12.1.1 Architects and Consultants. Each of the parties’ respective architects, engineers, and other design consultants shall procure and maintain their own professional liability insurance with no less than One Million Dollars (\$1,000,000) in coverage and with a deductible of not more than Twenty-Five Thousand Dollars (\$25,000) or that is reasonable and customary in the industry and acceptable to the parties. Such policies shall include coverage of the Architects and Consultants’ indemnity of Rockville Town Center LLC, the Residential Co-Developer, the City, Garage Developer and FRIT, and shall contain an endorsement to the effect that no act or omission of the insureds shall affect the obligation of the insurer to pay the full amount of any loss sustained.

12.1.2 General Contractors. The general contractor(s) shall obtain and maintain the following insurance in limits of liability reasonably acceptable to the parties hereto:

- a. Automobile Liability Insurance with a minimum of One Million Dollars (\$1,000,000) limit each occurrence;
- b. Builder's Risk Insurance with a Completed Value form, in each case covering the full replacement cost of the structure;
- c. Workers Compensation Insurance (Statutory Limits) and Employer's Liability for a set of limits of not less than \$500/\$500/\$500,000;
- d. General Liability Insurance with Limits of One Million Dollars (\$1,000,00) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,00) products and completed operations aggregate;
- e. Coverage for Mechanics' Liens
- f. Excess (Umbrella) Insurance with Limits of Fifty Million Dollars (\$50,000,000) each occurrence and in the aggregate.

Each general contractor shall name or have named Rockville Town Center LLC, the City, FRIT, Garage Developer and the Residential Co-Developer (and, if required the Residential Co-Developer's Lenders and equity investors) as additional insureds, as appropriate, for liability arising out of or in connection with acts, errors, or omissions of the general contractor. Prior to commencement of work, each general contractor shall submit proof of such insurance by providing to the parties hereto copies of all policies of insurance with applicable endorsements reflecting the foregoing coverages. Each general contractor shall be required to implement a water intrusion management plan for the Project.

12.1.3 Subcontractors. All subcontractors shall obtain and maintain the following insurance in limits of liability reasonably acceptable to the parties hereto:

- a. Automobile Liability Insurance
- b. Builder's Risk Insurance
- c. Workers Compensation Insurance (Statutory Limits) and Employer's Liability for a set limit of not less than \$500/\$500/\$500,000
- d. General Liability Insurance
- e. Coverage for Mechanics' Liens
- f. Excess (Umbrella) Insurance

Each subcontractor shall name or have named Rockville Town Center LLC, the City, FRIT, Garage Developer and the Residential Co-Developer (and, if required the Residential Co-Developer's Lenders and equity investors) as additional insureds, as appropriate, for liability arising out of or in connection with acts, errors, or omissions of the subcontractor. Prior to commencement of work, the subcontractors shall submit proof of insurance by providing to the parties hereto

copies of all policies of insurance with applicable endorsements reflecting the foregoing coverages.

12.1.4 Warranty Period Any contractor or subcontractor who has otherwise completed its work at the Project, and who subsequently returns to the Project to perform warranty type work, shall perform such work under its own insurance coverages. All such respective insurance coverages in the warranty period must adhere to the requirements for coverage otherwise described in Sections 12.1.2 (General Contractors) and 12.1.3 (Subcontractors).

12.2 Insurance Company Requirements. All of the insurance coverages prescribed by this Section 12 shall (a) be procured from financially sound and reputable insurers qualified to transact an insurance business in the State of Maryland and have an AM Best Rating of at least "A-X" and (b) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved.

12.3 Notice of Cancellation. Each insurance policy to which this Section 12 applies shall provide, either by its terms or by endorsement, that the insurer shall furnish the parties at least sixty (60) days written notice before the insurance coverage may be cancelled or materially changed.

12.4 Deficiencies in Coverage and Failure to Maintain Insurance. If any party obtains actual knowledge of any reduction or cancellation in the coverage provided under any insurance required under this Section 12, or in the protection afforded thereunder, such party shall promptly notify the other parties in writing and affording the non-compliant party (or its respective Architects and Consultants, contractor(s) or subcontractors, as applicable), a period of ten (10) Business Days to cure such default. If such default is not so cured within the aforesaid ten (10) Business Day cure period, any other party hereto shall have the right to purchase the required insurance, with the cost thereof to be paid by the defaulting party. Notwithstanding anything to the contrary set forth herein, upon the giving by any party hereto of the notice specified in this Section 12.4, no other notice or cure periods provided for in this Agreement shall apply to such default by the non-compliant party.

12.5 Indemnity Obligations if Insureds. The insurance coverages required pursuant to this Section 12, shall expressly cover the parties' indemnity obligations under this Agreement.

12.6 Insurance Does Not Waive Obligations. No acceptance or approval of any insurance agreement or agreements, shall (a) relieve or release or be construed to relieve, limit or release any party hereto or other person from any liability, duty, or obligation assumed by, or imposed upon it or (b) impose any obligation upon the additional insured(s)/loss payees.

12.7 Waiver of Subrogation. The parties waive any rights of subrogation they may have or obtain against each other and against their respective Architects and

Consultants, contractor(s) and subcontractors either at law or in equity, related to or resulting from the acts or omissions of the parties, their Architects and Consultants, contractor(s) and subcontractors pursuant to this Agreement, to the extent of any loss or damage which is insured under each of their respective property insurance policies and Builders Risk Insurance. The parties agree that they shall require their respective insurers to include in their property insurance policies and Builders Risk Insurance a waiver of subrogation and that they shall require the same waiver to be obtained by their Architects and Consultants, contractor(s) and subcontractors in their respective insurance coverages.

28. Amendment to Exhibit F. Exhibit F of the GDA is hereby amended by deleting that Exhibit in its entirety and replacing it with the new Exhibit F attached hereto and made a part hereof.

29. Amendment to Exhibit Q (Term Sheet for Leasing of Parking Spaces by Residential Co-Developer). Exhibit Q of the GDA, which contains the term sheet for the leasing of the certain parking spaces by the Residential Co-Developer, is hereby deleted in its entirety and replaced with the words "INTENTIONALLY DELETED."

30. Miscellaneous. Any titles of the several parts and Sections of this First Amendment are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. This First Amendment is executed in four (4) counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. In all other respects, the GDA shall remain in full force and effect and binding on the parties thereto and their successors and assigns, except as amended herein. This First Amendment shall be interpreted in accordance with the laws of the State of Maryland.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have set their hand as of the date first above written.

FEDERAL REALTY INVESTMENT TRUST RESIDENTIAL CO-DEVELOPER*

*See Attached Signature Pages

By: _____
Name: Dawn Becker
Title: Executive Vice-President, General
Counsel and Secretary

THE MAYOR AND COUNCIL OF
ROCKVILLE, MARYLAND

By: _____
Scott Ullery
City Manager

JOINDER

RD Rockville Garage, LLC joins in the execution of the Agreement solely for the purpose of acknowledging and agreeing to the undertakings of the Garage Developer and making the representations and warranties, all as contained in the GDA, as amended by this First Amendment.

RD ROCKVILLE GARAGE, LLC**

**See Attached Signature Page

RTS RESIDENTIAL BLOCK 1/2, LLC,
A Delaware Limited Liability Company

By: RTS-RD Rockville Investments I, LLC,
A Delaware Limited Liability Company,
Sole Member and Manager

By: RTS-RD Rockville Management I, LLC,
A Delaware Limited Liability Company,
Manager

By: RTS-RD Rockville, LLC,
A Delaware Limited Liability Company,
Sole Member and Manager

By: RD Rockville, LLC,
A Maryland Limited Liability Company,
Sole Member and Manager

By: RD Maryland Avenue Limited
Partnership,
A Maryland Limited Partnership,
Sole Member and Manager

By: RD Commerce Street, LLC,
A Maryland Limited Liability
Company, General Partner

By: S.J. Ross Associates,
Inc., A Maryland
Corporation,
Its Manager

By: _____
Scott J. Ross,
President

RTS RESIDENTIAL BLOCK 3B, LLC,
A Delaware Limited Liability Company

By: RTS-RD Rockville Investments I, LLC,
A Delaware Limited Liability Company,
Sole Member and Manager

By: RTS-RD Rockville Management I, LLC,
A Delaware Limited Liability Company,
Manager

By: RTS-RD Rockville, LLC,
A Delaware Limited Liability Company,
Sole Member and Manager

By: RD Rockville, LLC,
A Maryland Limited Liability Company,
Sole Member and Manager

By: RD Maryland Avenue Limited
Partnership,
A Maryland Limited Partnership,
Sole Member and Manager

By: RD Commerce Street, LLC,
A Maryland Limited Liability
Company, General Partner

By: S.J. Ross Associates,
Inc., A Maryland
Corporation,
Its Manager

By: _____
Scott J. Ross,
President

RTS RESIDENTIAL BLOCK 5, LLC,
A Delaware Limited Liability Company

By: RTS-RD Rockville Investments II, LLC,
A Delaware Limited Liability Company,
Sole Member and Manager

By: RTS-RD Rockville Management II, LLC,
A Delaware Limited Liability Company,
Manager

By: RTS-RD Rockville, LLC,
A Delaware Limited Liability Company,
Sole Member and Manager

By: RD Rockville, LLC,
A Maryland Limited Liability Company,
Sole Member and Manager

By: RD Maryland Avenue Limited
Partnership,
A Maryland Limited Partnership,
Sole Member and Manager

By: RD Commerce Street, LLC,
A Maryland Limited Liability
Company, General Partner

By: S.J. Ross Associates,
Inc., A Maryland
Corporation,
Its Manager

By: _____
Scott J. Ross,
President

RD Rockville Garage, LLC,
A Maryland Limited Liability Company

**By: RD Maryland Avenue Limited
Partnership,**
A Maryland Limited Partnership,
Manager

By: RD Commerce Street, LLC
A Maryland Limited Liability Company,
General Partner

By: S.J. Ross Associates, Inc.,
A Maryland Corporation,
Manager

By: _____
Scott J. Ross, President

Exhibit F
Project Development Schedule

Project Milestone Dates:

City of Rockville – CIP	6/30/03
Montgomery County Council – CIP Supplemental	12/15/03
City of Rockville – Create Parking District	12/15/03
Equity Commitment	Phase II Closing
Loan Commitment	Phase II Closing
Tri-Party Agreement in Execution Form	Phase II Closing
Pad Delivery – Block 1/2	Phase I Closing – 180 days
Pad Delivery – Library	Phase I Closing – 90 days
Pad Delivery – Cultural Building	Phase I Closing – 15 months
Pad Delivery – Block 3B	Phase I Closing – 150 days
Pad Delivery – Block 4	Phase II Closing – 90 days
Pad Delivery – Block 5	Phase I Closing – 90 days
Commence Construction – Block 1/2	Pad Delivery – 60 days, but no earlier than Phase II Closing
Commence Construction – Library	Pad Delivery – 60 days
Commence Construction – Cultural Building	Pad Delivery – 60 days
Commence Construction – Block 3B	Pad Delivery – 60 days
Commence Construction – Block 4	Pad Delivery – 60 days
Commence Construction – Block 5	Pad Delivery – 60 days
Complete Shell Construction – Block 1/2	Commence Construction-Block 1/2 – 20 months
Commence Residential Parking Lease Payment	Pad Delivery Block ½ – 26 months
Complete Construction – Library	Pad Delivery-Library – 24 months
Complete Shell Construction – Cultural Building	Pad Delivery-Cultural Building – 12 months
Complete Shell Construction – Block 3B	Commence Construction-Block 3B – 18 months
Complete Shell Construction – Block 4	Commence Construction-Block 4 – 18 months
Complete Shell Construction – Block 5	Commence Construction-Block 5 – 18 months
Complete Maryland Avenue	Phase II Closing – 24 months
Complete Town Square	Phase II Closing – 26 months
Complete Market Street	Phase II Closing – 30 months